



General Assembly

Amendment

February Session, 2004

LCO No. 4809

SB0039204809SD0

Offered by:

SEN. DEFRONZO, 6th Dist.

SEN. SULLIVAN, 5th Dist.

To: Subst. Senate Bill No. 392

File No. 399

Cal. No. 286

**"AN ACT CONCERNING THE STATE CONTRACT REVIEW
PROCESS."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2004*) As used in sections 2 to
4 6, inclusive, of this act:

5 (1) "State agency" means an executive office, department, division,
6 board, commission or other office or officer in the executive branch of
7 state government but does not mean any quasi-public agency;

8 (2) "Privatization contract" means an agreement or series of
9 agreements between a state agency and a nongovernmental person or
10 entity, in which such person or entity agrees to provide services valued
11 at five hundred thousand dollars or more over the life of the contract
12 that are substantially similar to and in lieu of services provided, in
13 whole or in part, by employees of such agency or by employees of

14 another state agency for such state agency. "Privatization contract"
15 does not include the renewal, modification or extension of a
16 privatization agreement in effect on or before the effective date of this
17 section an agreement to provide legal services, litigation support or
18 management or financial consulting only;

19 (3) "Large procurement contracts" means any contract or
20 amendment in excess of five hundred thousand dollars for the
21 purchase or lease of all supplies, materials or equipment, as defined in
22 subdivision (2) of section 4a-50 of the general statutes; and

23 (4) "Comparative costs" means a comparison of the costs of entering
24 into a privatization contract to the costs of the state continuing to
25 provide the services that are the subject of the privatization contract,
26 using the methodology set forth in section 2 of this act.

27 Sec. 2. (NEW) (*Effective October 1, 2004*) (a) No state agency shall
28 execute a proposed privatization contract and no such contract shall be
29 valid unless: (1) Such contract is cost effective and fiscally prudent
30 taking into consideration comparative costs including all direct and
31 indirect costs to the state and the impact of such privatization contract
32 on the public health and safety and the residents of Connecticut who
33 use the services that are the subject of the privatization contract, and
34 (2) such agency has complied with the provisions of section 4 of this
35 act.

36 (b) Prior to any state agency's solicitation of bids for a privatization
37 contract, such agency shall prepare an analysis of the costs and
38 benefits to the agency of (1) privatizing services, and (2) continuing to
39 provide such services using state employees of the state agency. Such
40 analysis shall include, but not be limited to: (A) An examination of all
41 direct and indirect costs to the state, including health insurance,
42 pension costs of state employees, unemployment compensation costs
43 of state employees terminated as a result of the privatization contract,
44 gain or loss of income tax and sales tax revenue to the state, and (B) an
45 examination of the effect of such proposed privatization on the quality

46 of service, the public health and safety and residents of the state who
47 may utilize such privatized service. In determining the cost of
48 privatizing services, pursuant to this subsection, the state agency shall
49 calculate labor costs for each employee position at a rate no less than
50 the middle range salary of a state employee job class substantially
51 similar to such employee position. Additionally, the state agency shall
52 include in such cost analysis any costs or penalties the state may incur
53 if such contract is terminated by the state prior to the termination date
54 contained in such contract. Each state agency shall transmit such
55 analysis to the Secretary of the State who shall maintain copies of each
56 such proposed contract and analysis as public records. Any such
57 privatization contract or renewal, modification or extension of a
58 privatization agreement in effect on or before the effective date of this
59 section shall be subject to performance audits performed by the
60 Auditors of Public Accounts on a periodic basis, as determined by the
61 Auditors of Public Accounts. Copies of any such audit reports shall
62 also be submitted to, and maintained as public records by, the
63 Secretary of the State.

64 Sec. 3. (NEW) (*Effective October 1, 2004*) At least sixty days prior to
65 publishing any notice soliciting bids for a privatization contract, a state
66 agency shall notify each collective bargaining organization
67 representing employees of the agency of such planned solicitation.
68 After consulting with the potentially affected bargaining units, if any,
69 the agency shall provide adequate resources for the purpose of
70 encouraging and assisting present agency employees to organize and
71 submit a bid to provide the services that are the subject of the
72 privatization contract. In determining what resources are adequate for
73 this purpose, the agency shall refer to an existing collective bargaining
74 agreement of a similar employee organization whose members
75 perform the subject services, if available, which agreement provides
76 similar resources in the same or other agencies. If no such collective
77 bargaining agreement exists, the agency shall refer to any existing
78 collective bargaining agreements providing such resources, and shall
79 provide such resources at the minimum level of assistance provided in

80 such agreements. The state agency shall also provide to the state
81 employees its analysis and any report of the Auditors of Public
82 Accounts prepared in accordance with subsection (b) of section 2 of
83 this act. The agency shall consider any such employee bid on the same
84 basis as all other bids. An employee bid may be made as a joint
85 venture with other persons.

86 Sec. 4. (NEW) (*Effective October 1, 2004*) The state agency soliciting
87 bids for a privatization contract shall require the bidders to include the
88 following information in their bid submission:

89 (1) The wage rate or annual salary for each employee or, if not
90 known, each position covered by the privatization contract;

91 (2) An agreement by the bidder or contractor to offer available
92 employee positions pursuant to the contract to qualified regular
93 employees of the state agency whose state employment is terminated
94 because of the privatization contract and who satisfy the hiring criteria
95 of the contractor;

96 (3) An agreement by the bidder or the contractor to refrain from
97 engaging in discriminatory employment practices, as defined in
98 section 46a-51 of the general statutes, and to take affirmative steps to
99 provide such equal opportunity for all such persons;

100 (4) A report on the length of continuous employment of current
101 employees of the contractor by job classification, without providing
102 individually identifiable information on such employees and
103 information detailing the relevant prior experience of current
104 employees within each job classification. If the positions identified by
105 the bidder are newly created positions, the bid shall identify the
106 minimum requirements for prospective applicants for each such
107 position;

108 (5) The annual rate of employee turnover;

109 (6) Any legal or administrative proceedings pending or concluded

adversely against the applicant or any of the applicant's principals or key personnel within the past five years that relate to the procurement or performance of any public or private construction contract, employee safety and health, labor relations or other employment requirements and whether the applicant is aware of any investigation pending against the applicant or any principal or key personnel. Such information shall specify the date of the complaint, citation, court finding or administrative finding, the enforcement agency, rule, law or regulation involved and any additional information the contractor elects to submit;

(7) Any collective bargaining agreements or personnel policies covering the employees that will provide services to the state; and

(8) Any political contributions made by the bidder or any employee of the bidder who participated substantially in the preparation of the bid, to any elected officer of the state or member of the General Assembly during the four years prior to the due date of the bid. For purposes of this section, "participated substantially" means participation that was direct, extensive and substantive, not peripheral, clerical or ministerial.

Sec. 5. (NEW) (*Effective October 1, 2004*) (a) Any state agency selecting a bidder for a privatization contract shall develop a contract that is acceptable to the bidder and the state agency provided such contract shall include the following terms:

(1) The contractor shall be required to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor;

(2) The contractor shall be prohibited from engaging in discriminatory employment practices, as defined in section 46a-51 of the general statutes, and shall take affirmative steps to provide such equal opportunity for all such persons;

142 (3) The contractor shall be required to submit to performance audits
143 of such contract by the Auditors of Public Accounts on a periodic
144 basis, as determined by the Auditors of Public Accounts; and

145 (4) Such contract shall not become effective until the contractor and
146 state agency have complied with the provisions of sections 2 to 6,
147 inclusive, of this act.

148 (b) Prior to signing such contract, the state agency shall submit such
149 contract to the Secretary of the State who shall maintain such contract
150 as a public document. Concomitantly, the state agency shall submit to
151 the Secretary of the State the following information:

152 (1) A certification that the state agency has complied with all the
153 requirements of the state agency contained in the provisions of
154 sections 2 to 4, inclusive, of this act;

155 (2) The state agency analysis prepared in accordance with section 2
156 of this act and a report by the state agency explaining any changes in
157 such analysis and report as a result of the terms of the proposed
158 privatization contract;

159 (3) A state agency analysis of the quality of the services to be
160 provided by the designated bidder and whether such services are
161 equal to or exceed the quality of services that are provided by regular
162 agency employees;

163 (4) A certification by the designated bidder that the bidder and its
164 supervisory employees, while in the employ of the designated bidder,
165 have no adjudicated record of repeated wilful noncompliance with any
166 relevant federal or state regulatory law including, but not limited to,
167 laws concerning labor relations, occupational safety and health,
168 nondiscrimination and affirmative action, environmental protection
169 and conflicts of interest; and

170 (5) A description of why the proposed privatization contract is in
171 the public interest.

172 (c) Any employees, or collective bargaining agent of any employee
 173 adversely affected by any proposed privatization contract filed with
 174 the Secretary of the State may file a motion for an order to show cause
 175 in the Superior Court for the Judicial District of Hartford claiming that
 176 such contract fails to comply with the substantive or procedural
 177 requirements of sections 2 to 6, inclusive, of this act. A ruling on any
 178 such motion may: (1) Deny the motion, if the court finds that all
 179 procedural and substantive provisions of sections 2 to 6, inclusive, of
 180 this act have been complied with; (2) grant the motion if the court finds
 181 that the proposed contract would substantively violate the provisions
 182 of this act; or (3) stay the effective date of the contract until any
 183 procedural or substantive defect found by the court has been
 184 corrected.

185 Sec. 6. (NEW) (*Effective July 1, 2004*) On or before October 1, 2004,
 186 the Commissioner of Administrative Services shall provide to the joint
 187 standing committee of the General Assembly having cognizance of
 188 matters relating to government administration and elections a report
 189 on large procurement contracts. Such report shall include: (1) A list
 190 showing the vendor, duration and cost to the state of each large
 191 procurement contract to which the state is a party and which was
 192 entered into or in effect during fiscal years ending June 30, 2001, to
 193 June 30, 2004, inclusive; (2) a description of the procedures employed
 194 by the Department of Administrative Services or any other involved
 195 state agency to assure that the awarding of such large procurement
 196 contracts took place solely for the benefit of the public, and without
 197 favoritism or undue influence based upon the economic, social, or
 198 political status or activities of the vendor."

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>July 1, 2004</i>

